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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

PACIFIC AIR TRANSPORT, INC.,

Plaintiff and Appellant,

v.

CAREER AVIATION COMPANY, INC.,

Defendant and Respondent.

B159530

(Los Angeles County  
Super. Ct. No. BC 209037)

APPEAL from a judgment of the Superior Court of Los Angeles County. David Horowitz, Judge. Affirmed.

Law Offices of Lloyd Kirschbaum and Lloyd Kirschbaum, for Appellant Robert B. Hirsch.

Frederick W. Smith, Jr. for Defendant and Respondent Career Aviation Company, Inc.

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Robert B. Hirsch (Hirsch) appeals the judgment entered after a court trial on Career Aviation Company, Inc.'s (Career) cross-complaint for conversion, awarding Career damages for the wrongful retention of Career's personal property arising out of the terminated lease of a Learjet owned by Career. Hirsh, who was the president and

chief executive officer of cross-defendant Pacific Air Transport, Inc. (Pacific Air), alleges that there is insufficient evidence to warrant imposing individual liability on him for the conversion, and the imposition of alter-ego liability is not warranted. We affirm.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On February 11, 1999, the parties entered into a written “Aircraft Lease Agreement” (Lease). Pursuant to the Lease, Career leased to Pacific Air for a term of 36 months a 1979 Learjet LR-35A-221 for a rental of \$25,000 per month. The Lease obligated Career to deliver an airworthy craft subject to Pacific Air’s right to inspect the craft and approve its airworthiness.

Pacific Air alleged that upon delivery of the Learjet, Pacific Air inspected it and determined that it needed substantial repairs and mechanical work in order to be airworthy. Pacific Air advised Career of the problems with the Learjet, and Career advised Pacific Air that it did not have the necessary funds to undertake the repairs. Pacific Air agreed to loan Career \$75,000 to make the necessary repairs prior to March 1, 1999. However, Career failed to make the repairs and deliver the aircraft. Pacific Air alleged it was unable to include the Learjet in its operations specification submitted to the Federal Aviation Administration, causing Pacific Air damages in the sum of \$1,825,000. No copies of any promissory note or the Lease were attached to Pacific Air’s complaint.

Career cross-complained against Pacific Air, claiming that Pacific Air failed to comply with the payment requirements of the Lease and refused to accept delivery of the Learjet pursuant to the terms of the Lease. Career also claimed that when it returned the Learjet, Pacific Air failed to return certain personal property, including security covers, radar, interior seating, and logbooks.<sup>1</sup>

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<sup>1</sup> The operative pleading, the Second Amended Complaint (cross-complaint), alleged claims against Pacific Air and Robert B. Hirsch, for breach of lease, slander of title, quiet title, conversion, claim and delivery, injunctive relief, temporary restraining order, fraud and deceit, and libel.

Pacific Air was suspended for failure to pay taxes on November 1, 2000, and Career successfully moved to strike its pleadings and a default was entered against Pacific Air on the cross-complaint.

At the trial on Career's cross-complaint, Oliver K. Robinson, the president of Career, testified that the Learjet was delivered and accepted at Los Angeles International Airport (LAX). Although the Learjet was a cargo plane, it was delivered with four passenger seats, a Learjet approved cargo interior (which included a subfloor and cargo nets to break up different compartments), aircraft records, log books, and historic records (collectively "records") from the date of manufacture. It is a requirement of the FAA to deliver all of the plane's records when it is leased or sold.

When the plane was delivered to Pacific Air at the Garrett Aviation facilities, Randy Noe, the director of operations for Career, delivered three boxes of records, four seats, the cargo interior, and the aircraft, which was in complete operating condition. Robert Hirsch, the president of Pacific Air, signed a receipt for the records. Noe saw Hirsch and Gregory McDonald, the director of maintenance for Pacific Air, take the records and load them into the back of McDonald's car.

After four or five months when Pacific Air failed to pay the rent, Career procured return of the Learjet from a Garrett Aviation hangar at LAX where it was being stored. When Noe retrieved the plane at Garrett Aviation, part of the cargo interior was missing, the weather radar system was missing, the seats were missing, and the records were missing. Without the records, including a record of the components on the aircraft, the plane is basically worthless, with only salvage value. Career had to obtain a special ferry permit to ship the plane back to where it could receive maintenance in Oakdale. Noe flew the plane back to Oakdale.

Career had to replace the radar (\$20,000), four seats at \$6,500 each (\$26,000), and a cargo floor (\$13,000). The missing records for the Learjet had filled a filing cabinet of four drawers, and these records showed every flight the aircraft had taken since it was manufactured. Career performed an inspection of the aircraft for the FAA wherein

Career's computer records of the plane's components were compared to the aircraft. The FAA approved the plane for Career's use only. This process took about two weeks, approximately 300 man-hours. Career's in-house shop rate was \$65 per hour, or about \$20,000 of inspection time. Nonetheless, the plane was not saleable without the records and could only be used for Career's cargo services or as salvage. The Learjet was worth about \$600,000 to \$700,000 as salvage, but \$2.5 to \$3 million with all of the proper records.

Career made numerous requests to Hirsch, the president of Pacific Air, for the records, and Career was told that the records were with the Learjet. At other times, Hirsch claimed he could not find the records after diligently looking for them. Career got the records back about 16 months later,<sup>2</sup> when they were discovered, by someone from Garrett Aviation, in Pacific Air's offices. The offices were in the same building complex as Garrett Aviation and Pacific Air had access to the building in which the records were located. Also found in the office were two of the four missing seats. When Career had initially received the plane back, it did some maintenance work. When the records were returned, Career had to go back and update the maintenance, at an additional cost of \$106,578.

Hirsch testified that he was the president of Pacific Air, was also its Chief Executive Officer and Secretary. Michael Weinberg was the Chief Financial Officer. Hirsch was the sole shareholder. All of Pacific Air's planes were leased. In 1999, it was just getting started in the business of shipping time-critical documents and packages from coast-to-coast, and leased two planes from Career. Prior to leasing the Learjet from Career, McDonald inspected the planes at Career's facility in Oakdale, California. Pacific Air posted a \$100,000 security deposit prior to taking the planes. Hirsch claimed the second deposit was reduced by \$25,000 because Career needed the funds in order to

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<sup>2</sup> Pacific Air vacated its facilities at Garrett Aviation in March 2000 when it ceased doing business, and the records were found in July 2000.

repair the plane. After Pacific Air took possession of the plane, it had “quite a number of things” done to the plane. Hirsch testified the plane was returned to Career because of a number of problems with the plane. On many flights, they had to return under emergency conditions. Pacific Air advised Career they could not get the plane to conform and told Career to come pick up the plane. Hirsch directed McDonald to return whatever needed to be returned with the plane; he just wanted to “be done with this headache.”

The records had been maintained at Garrett Aviation. However, when the Learjet was returned, Hirsch did not personally oversee the process to ensure that everything was returned. After Pacific Air returned the plane, Hirsch went to the offices a couple of times, and noticed that the file cabinet was still there. McDonald did not give Hirsch anything documenting the property returned to Career. Later, Hirsch discovered that the records had not been returned. He looked in Pacific Air’s office at the Garrett Aviation facility, but could not find them. Hirsch asked McDonald to look for them, and asked Garrett’s maintenance people to look for them. They were unable to find the records or the passenger seats. As far as Hirsch knew, everything that belonged to Career was put back in the plane, including the navigation equipment. Hirsch searched the Garrett facilities himself for the missing records and equipment. Hirsch denied directing anyone at Pacific Air or Garrett to keep the books. He did not ask anyone at Garrett to look for the books, and did not hear from Garrett when they found the books.

William Tillitson is an insurance broker with Aon Aviation. Aon insured the Learjet that Pacific Air acquired from Career. After the Learjet was returned, Tillitson received a phone call from the pilot that picked up that plane who indicated some items were missing. A day or so later a letter followed indicating that Career would make a claim for the missing items. Tillitson told Career that the claim should be filed by Pacific Air. Tillitson spoke to Hirsch. Hirsch told him that the plane had been picked up by the owner, there was a dispute over various maintenance items, but Hirsch did not want to

file a claim. Tillitson was not told that the items were being held as a part of a commercial dispute.

Pacific Air filed a mechanics lien against Career for \$95,000 on account of the repair work done on the aircraft. Pacific Air had hired Garrett to do the repair work.

The trial court found for Career. In particular, the court found that the books were kept in a file cabinet in a small office. Hirsch instructed his maintenance director, McDonald, to give the Learjet and everything else back to Career, but did not check whether all of the items had been returned. On the other hand, when Hirsch received notification that the records were not with the plane, he did nothing to secure the records. When contacted by the insurance broker, Hirsch did not file a claim and did not tell the insurance agent the items were missing. Many months later the items were discovered at the facility and had been abandoned by Pacific Air and Hirsch. The trial court found Career established its ownership and rights to the log books and personal property. Hirsch had personal control of Career's property, notice of missing property, and did nothing to locate that property or return it. Relying on *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, the court found that because officers and directors of a corporation may become personally liable for torts if they directly ordered, authorized, or participated in tortious conduct, Career was entitled to damages for conversion, and the court ordered judgment in its favor in the sum of \$166,900.

## **DISCUSSION**

Hirsch argues that there is insufficient evidence to support a judgment imposing personal liability on him for conversion because there was no evidence at trial he was personally responsible for sequestering the maintenance records. He contends it was irrelevant that he was the sole shareholder, officer, and director of Pacific Air, that he negotiated and signed the Learjet Lease, that he inspected and took possession of the Learjet and its records, that he signed the acceptance form, and that he signed all of Pacific Air's correspondence on this issue. On the other hand, he stated he returned the

items with the Learjet; he searched the offices of Pacific Air, and that he was unable to find the items. He contends Career is unable to show any act by Hirsch that was undertaken in his individual capacity, rather than as an officer and director of Pacific Air. On the other hand, the court's finding that Hirsch had personal control of the premises and personal control of the plaintiff's property is directly contradicted by the evidence, because the records were not found until four months later by Garrett Aviation personnel, not Pacific Air personnel. Lastly, he contends alter-ego liability is not warranted in this case because no evidence on the necessary factual predicates for imposing alter-ego liability was admitted. (See *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 838-840.)

## **I. STANDARD OF REVIEW.**

When an appellate court reviews a challenge to a verdict, we apply the deferential substantial evidence standard of review. We resolve all conflicts in the evidence in favor of the prevailing party, and we draw all reasonable inferences in a manner that upholds the verdict. (*Holmes v. Lerner* (1999) 74 Cal.App.4th 442, 445.) It is not our task to weigh conflicts and disputes in the evidence; that is the province of the factfinder. Our authority begins and ends with a determination of whether, on the entire record, there is any "substantial" evidence, contradicted or uncontradicted, which will support the judgment. (*Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 506-507.)

## **II. THE RULE THAT CORPORATE DIRECTORS AND OFFICERS MAY BE PERSONALLY LIABLE FOR THEIR OWN TORTS APPLIES TO THIS CASE, AND SUPPORTS THE TRIAL COURT'S FINDING THAT HIRSCH IS PERSONALLY LIABLE FOR THE CONVERSION OF CAREER'S PERSONAL PROPERTY.**

Corporate directors may not be held vicariously liable for the torts of the corporation in which they did not participate. (*Francis T. v. Village Green Owners Assn.*

(1986) 42 Cal.3d 490, 503 (hereafter *Francis T.*.) As pointed out in *Francis T.*, “liability does not depend on the same grounds as ‘piercing the corporate veil,’ on account of inadequate capitalization for instance, but rather on the officer or director’s personal participation or specific authorization of the tortious act.” (*Id.* at p. 504.) In such case, liability may be derived from the director’s own tortious conduct, not from their status as a director or officer. (*Ibid.*) “Directors are jointly liable with the corporation and may be joined as defendants if they personally directed or participated in the tortious conduct.” (*Francis T.*, *supra*, at p. 504; *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.*, *supra*, 1 Cal.3d at p. 595.) Furthermore, directors are liable to third persons injured by their own tortious conduct even where they did not act on behalf of the corporation, or where the corporation is in fact also liable. (*Francis T.*, *supra*, at p. 504.) The director’s duty to third persons is also independent of the corporation’s, and directors owe a duty of care not to inflict personal injury on third persons. Otherwise, corporate directors could seek to shield themselves behind the corporation, even where the corporation is insolvent. (*Id.* at p. 505.)

To maintain an action against an officer or director for individual liability based upon tortious conduct, the plaintiff may show either that the officer or director participated in the tortious conduct, or that the director or officer knowingly consented to or approved such acts. (*PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1380.) In addition, the plaintiff can show that although the director reasonably should have known of some activity under his or her control could injure the plaintiff, they negligently failed to take or order appropriate action to avoid the harm. (*Ibid.*)

“Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff’s ownership or right to possession of the property at the time of the conversion; the defendant’s conversion by a wrongful act or disposition of property rights; and damages. It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use.”



(*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 543-544.) The taking of plaintiff's property, i.e., dispossessing the plaintiff of its property, amounts to conversion, as does an unauthorized transfer of plaintiff's property; and if possession of the plaintiff's property was lawfully acquired, the wrongful withholding of it, when return is demanded, is a conversion. (5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, §§ 620-622, pp. 715-716.) "The act [that is alleged to constitute conversion] must be knowingly or intentionally done, but a wrongful intent is not necessary." (*Id.* at § 624, pp. 717-718, italics omitted.) A defendant can be found liable for the tort of conversion even if he himself did not take possession of the plaintiff's property. "Where the conversion is the result of the acts of several persons, which, though separately committed, all tend to the same end, there is a joint conversion. [Citation.]" (*Mier v. Southern California Ice Co.* (1922) 56 Cal.App. 512, 518.) A defendant can be liable as a joint tortfeasor in a conversion by acquiescing in a wrongful act. (*Meyer v. Thomas* (1940) 37 Cal.App.2d 720, 726.)

The evidence here, when viewed most favorably to the judgment and indulging all reasonable inferences in support of the judgment, amply supports a finding that Hirsch either committed the conversion himself, or authorized it. Career's manager, Noe, saw Hirsch and McDonald take possession of the personal property. When the Learjet was returned, the enumerated items were missing, including the plane's crucial records and logs. Hirsch, his employee McDonald, and Pacific Air were the last persons to have possession of the personal property. Hirsch did nothing to ensure the personal property was returned, instead making a half-hearted attempt to locate the items, implying that he knew they might not have been returned. Hirsch declined to make an insurance claim, again implying he maintained custody and control of the items and did not want to make a fraudulent insurance claim. Finally, the items mysteriously reappeared at Pacific Air's abandoned offices several months later, implying Hirsch or his employee McDonald, at

Hirsch's direction, had furtively attempted to return the items without revealing their own complicity in the disappearance of the property.<sup>3</sup>

### **DISPOSITION**

The judgment of the superior court is affirmed. Respondent to recover costs on appeal.

MUÑOZ (AURELIO), J.\*

We concur:

PERLUSS, P. J.

WOODS, J.

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<sup>3</sup> As our discussion indicates and the trial court clearly recognized, the alter-ego doctrine has no application to the *torts* of officers and directors.

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.